

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 1885 – HB 1766

March 5, 2014

SUMMARY OF ORIGINAL BILL: Includes the legal guardian, along with the parent, as an individual who may sign the power of attorney for the care of a minor child. Authorizes the power of attorney to be signed by two witnesses instead of a notary public. Authorizes non-custodial parents, grandparents or competent adults when standing in loco parentis to make health care decisions for an unemancipated minor in the absence of a guardian or legal custodian, or an individual who has been given a power of attorney for the care of the child.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (013295): Deletes all language after the enacting clause. Authorizes the power of attorney for care of a minor child to be signed by two witnesses instead of a notary public. Defines “health care”, “health care decisions”, “health care institution”, “health care provider”, and “reasonably available” as currently defined in Tenn. Code Ann. § 68-11-1802. Authorizes non-custodial parents, grandparents, adult siblings, stepparents, or other adult family members when standing in loco parentis to make health care decisions for an unemancipated minor in the absence of a guardian or legal custodian, or an individual who has been given a power of attorney for the care of the child.

Prohibits the treating health care provider or employee, an operator or employee of a health care institution, or an employee of the operator of a health care institution from standing in loco parentis. Requires the adult standing in loco parentis to sign an affidavit stating that the person has taken responsibility for the health care of the child. Authorizes a person standing in loco parentis to exercise existing parental rights to obtain medical records and information. Prohibits a person standing in loco parentis from consenting on behalf of the minor to withhold or withdraw life sustaining procedures; to an abortion; to sterilization; to psychosurgery; to admission to a mental health facility for a period longer than the durational limits in statute; or to mental health treatment for a minor 16 years of age or older.

Grants immunity for a person standing in loco parentis from being liable for damages except for acts of willful misconduct or gross negligence. Grants health care providers immunity from civil liability, criminal culpability, or professional disciplinary actions for treating an unemancipated minor without legal consent when relying on a written instrument that is consistent with the requirements set forth in the bill.

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FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- According to the Department of Children's Services, the provisions of the bill will not interfere with the department's ability to act as legal custodian or guardian of a child to make health care decisions for such child.
- According to the Department of Mental Health and Substance Abuse Services, the regional mental health institutes do not admit persons under the age of 18 years old; therefore, any fiscal impact to the state is estimated to be not significant.
- Any increase in the workload of the state and local court systems will not be significant and can be accommodated within existing resources of the court systems.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'Lucian D. Geise', is positioned above the printed name.

Lucian D. Geise, Executive Director

/kml